



Fiscal Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 139 (Patron – Cole)

LD#: 12100644

Date: 12/29/2011

Topic: Carrying concealed firearms

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends several sections of the *Code* relating to carrying concealed firearms. Under the proposal, language in § 18.2-308(A) that currently prohibits carrying a concealed firearm without a permit would be removed. However, the proposal inserts language in portions of the *Code* to prohibit carrying a concealed firearm under limited circumstances. The proposed amendments to § 18.2-248, for instance, create a Class 1 misdemeanor for carrying a concealed firearm while committing certain offenses relating to the sale, manufacture, etc., of controlled substances and imitation controlled substances. In addition, the proposal specifies that carrying a concealed firearm while distributing, etc., marijuana or distributing marijuana as an accommodation is a Class 1 misdemeanor. Currently, under § 18.2-308.4, it is a Class 6 felony to possess a firearm while in possession of a Schedule I or II controlled substance. If the firearm is possessed on or about the offender's person, he is subject to a mandatory minimum term of imprisonment of two years. A person who possesses a firearm while manufacturing, distributing, etc., a Schedule I or II controlled substance, synthetic cannabinoids, or more than one pound of marijuana is subject to a mandatory minimum term of five years.

The proposal retains existing prohibitions in § 18.2-308(J1) and (J3) against carrying a concealed handgun in a public place while under the influence of alcohol or illegal drugs and carrying a concealed handgun while consuming alcohol in a bar. In addition, the current misdemeanor and felony offenses defined in § 18.2-308.1 for possessing or using a firearm on school grounds would remain. However, the proposal limits one of the exemptions under this section to only include individuals who have a valid Virginia-issued concealed handgun permit; currently, anyone who has a valid concealed handgun permit is exempt in certain circumstances.

The proposal also expands § 18.2-53.1 to include carrying a concealed firearm. Currently, using a firearm in the commission of certain felonies carries a three-year mandatory minimum term of incarceration for the first offense, while a second or subsequent offense carries a five-year mandatory term. These mandatory terms must run consecutively with any punishment received for the primary or triggering felony. Under the proposal, anyone who carries a concealed firearm during the commission of specified

felonies would be subject to the mandatory minimum terms of incarceration, even if the firearm is not used or displayed in the commission of the crime.

Currently, under § 18.2-308(A), it is a Class 1 misdemeanor to carry a concealed weapon. A second violation under this section is a Class 6 felony and a third or subsequent violation is a Class 5 felony, punishable by up to ten years imprisonment. Under the proposal, carrying a concealed knife, flailing instrument, throwing star or any like weapon would continue to be a Class 1 misdemeanor for the first offense, Class 6 felony for a second offense, and a Class 5 felony for a third or subsequent offense. By removing firearms from § 18.2-308(A) and inserting the prohibition in certain specific statutes (punishable as a Class 1 misdemeanor), there would no longer be felony enhancements for second or subsequent convictions for unlawfully possessing a concealed firearm.

Analysis:

According to the fiscal year (FY) 2010 and FY2011 Sentencing Guidelines database, 1,340 offenders were convicted of a felony for using a firearm during the commission of certain felonies, in violation of § 18.2-53.1. The firearm conviction was most frequently accompanied by a robbery or felony assault conviction.

FY2010 and FY2011 Sentencing Guidelines data also indicate that 14 offenders were convicted of a felony for possessing a firearm on school property under § 18.2-308.1(B) during this two-year period. The weapon offense was the primary offense in nine of the cases. Of these, two-thirds (66.7%) of the offenders did not receive an active term of incarceration to serve after sentencing, while two other offenders received a local-responsible (jail) sentence of one and three months, respectively. One offender was given a state-responsible (prison) term of 2.5 years. According to the Circuit Court Automated Information System (CAIS) data for FY2010 and FY2011, one offender was convicted under § 18.2-308.1 for possessing a firearm on school property with the intent to use it. The primary, or most serious, offense for this sentencing event was attempted malicious wounding and the offender was sentenced to 13 years in prison.

According to FY2010 and FY2011 Circuit Court CAIS data, there were 430 convictions for possessing a firearm and certain drugs in violation of § 18.2-308.4 during this time period. The firearm offense was the primary, or most serious, offense in 13 of the cases. While nearly 39% of these offenders did not receive an active term of incarceration to serve after sentencing, more than half (54%) were sentenced to a local-responsible (jail) term, with a median sentence length of three months. The remaining offender received a state-responsible (prison) sentence of two years.

Data from the General District Court Automated Information System (CAIS) for FY2010 and FY2011 indicate that two offenders were convicted under § 18.2-308 for carrying a concealed handgun in public while under the influence of alcohol or illegal drugs. Two additional offenders were convicted of failing to carry a concealed weapon permit. None of these offenders received an active term of incarceration to serve after sentencing. No offenders were convicted under § 18.2-308 for consuming alcohol in a bar while carrying a concealed handgun during this time period.

According to FY2010 and FY2011 General District Court CAIS data, 2,329 offenders were convicted of a Class 1 misdemeanor for unlawfully carrying a concealed weapon in violation of § 18.2-308. The majority (71%) of these offenders were not given an active term of incarceration to serve. For the 29% who were given a local-responsible (jail) term, the median sentence was one month.

FY2010 and FY2011 Circuit Court CAIS data indicate that 71 offenders were convicted of a Class 6 felony for a second violation of unlawfully carrying a concealed weapon in violation of § 18.2-308. The weapon charge was the primary, or most serious, offense in 45 of the cases. Approximately half (53.3%) of the offenders were given a local-responsible (jail) term, for which the median sentence was three months. Three offenders were sentenced to a state-responsible (prison) term, with a median sentence

length of two years. During the same two-year period, 10 offenders were convicted of a Class 5 felony for a third or subsequent violation of § 18.2-308. The weapon charge was the primary offense in seven of the ten cases. While three of the seven offenders (43%) were given a jail term, with a median sentence of six months, three additional offenders received a prison term, for which the median sentence length was two years.

The number of these cases involving firearms (versus concealed knives or other weapons) is unknown.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding § 18.2-53.1 to include carrying a concealed firearm during the commission of certain felonies and limiting one of the exemptions for individuals who possess a firearm on school property to only include Virginia-issued concealed handgun permits, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the proposal also removes the felony enhancements for a second or subsequent conviction for carrying a concealed firearm, which may result in a decrease in the future prison bed space needs of the Commonwealth. The net impact that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

Local adult correctional facilities. Similarly, the proposal may affect local-responsible (jail) bed space needs; however, the net impact on jails cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs, however, cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines cover convictions under § 18.2-53.1 for use of a firearm during the commission of certain felonies. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Under current law, a juvenile carrying a concealed firearm could be charged for a Class 1 misdemeanor under § 18.2-308 (illegal possession of a concealed weapon) or § 18.2-308.7 (minor possessing a handgun). By expanding the felony provisions of § 18.2-53.1 to include carrying a concealed firearm during the commission of certain felonies, the proposal may result in additional commitments to the Department of Juvenile Justice. However, since the available information does not connect the juvenile firearm possession with the offenses required for the enhanced charge and punishment, the extent of the impact on juvenile correctional center (JCC) bed space needs cannot be quantified.

Juvenile detention facilities. Similarly, the Department of Juvenile Justice reports that, although a juvenile may be subjected to the proposed amendments, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.